



IT IS ORDERED as set forth below:

Date: January 14, 2008

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
TRUNG HUU HUYNH	:	BANKRUPTCY CASE
HA HUYNH,	:	NO. 07-10239-WHD
	:	
Debtors.	:	
_____	:	
	:	
CHASE BANK, USA, N.A.,	:	ADVERSARY PROCEEDING
	:	NO. 07-1026
Plaintiff,	:	
	:	
v.	:	
	:	
HA HUYNH,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Compel Discovery and Amend Discovery Order and the Motion to Test Sufficiency of Answers of Requests to Admissions, filed by the

plaintiff, Chase Bank, USA, N.A. (hereinafter the “Plaintiff”), in the above-captioned adversary proceeding. The Plaintiff seeks to compel the defendant, Ha Huynh (hereinafter the “Defendant”), to answer the Plaintiff's interrogatories and to respond to the Plaintiff's requests for production of documents and seeks an extension of the discovery period and other deadlines in this proceeding. In its Motion to Test the Sufficiency of Answers of Requests to Admissions, the Plaintiff asks the Court to deem admitted the statement contained within the Plaintiff's request for admissions, in accordance with Rule 36 of the Federal Rules of Civil Procedure, and an award of fees pursuant to Rule 37(c). The Defendant has failed to file a response to the Motions.¹

Rule 37(a)(2)(B) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by Rule 7037 of the Federal Rules of Bankruptcy Procedure, provides that the Court may compel a party to answer an interrogatory or to produce documents for inspection. Fed. R. Civ. P. 37(a)(2)(B). For good cause shown, the Motion to Compel is hereby **GRANTED**.² The Defendant shall answer the Plaintiff's interrogatories and respond

¹ The Court previously denied these motions without prejudice on the basis that the motions did not appear to have been served at the correct address. According to the affidavit of service filed, however, it appears that the Plaintiff has served the motions upon the Defendant at the Defendant's address of record, as well as an address believed by the Plaintiff to be the Defendant's current address.

² Rule 37(a)(4)(A) provides that, if the Court grants a motion to compel, the Court, subject to certain exceptions and after affording an opportunity to be heard, shall require the party against whom discovery was sought to pay the movant's reasonable expenses incurred in filing the motion. The Court cannot do so at this time because the Plaintiff did not request an award of fees pursuant to Rule 37(a)(4)(A), no notice of such a request or opportunity to be heard has been afforded to the Defendant, and the record provides no basis

to the Plaintiff's requests for production of documents on or before **February 15, 2008**. Additionally, the discovery period is hereby extended through and including **April 11, 2008**. The deadline for filing motions for summary judgment is likewise extended through and including **May 2, 2008**.

The Motion to Test the Sufficiency of Answers may be granted in part, but must be denied to the extent that the Motion requests the payment of fees pursuant to Rule 37(c)(2). Federal Rule of Civil Procedure 37, made applicable to this proceeding by Rule 7037, provides that:

If a party fails to admit what is requested under Rule 36 and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

- (A) the request was held objectionable under Rule 36(a);
- (B) the admission sought was of no substantial importance;
- (C) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (D) there was other good reason for the failure to admit.

FED. R. CIV. P. 37(c)(2). With certain exceptions, Rule 37(c)(2) "mandates that the court award the expenses incurred by the party in proving a denied admission, including attorney's fees." *Mutual Service, Inc. v. Frit Indus., Inc.*, 358 F.3d 1312 (11th Cir. 2004). The plain language of this rule requires that the party seeking an award of expenses later prove the

upon which the Court could determine the amount of an appropriate award or whether any of the exceptions to such an award would apply in this case.

"document to be genuine or the matter true." FED. R. CIV. P. 37(c)(2).

This rule is not applicable to this case. The Plaintiff has not proven the matters within the request for admission to be true. Because the Defendant has not responded to the request for admission, the matters contained therein are deemed admitted, and there is no need for the Plaintiff to incur any expenses to prove the truth of these matters. Accordingly, Rule 37(c)(2) does not entitle the Plaintiff to an award of expenses.

To the extent that the Motion requests that the Court deem admitted the matters contained within the request for admission,³ the Court finds that the Motion should be and, hereby is, **GRANTED**.⁴ Those items contained within the request for admission that are "statements or admissions of fact" or the "application of law to fact" are deemed admitted as provided for in Rule 36(a).

END OF DOCUMENT

³ The Court notes that a party may file a motion to test the sufficiency of answers or objections to a request for admissions. *See* FED R. CIV. P. 36(a). The Court may award attorneys fees incurred in the filing of such a motion in accordance with Rule 37(a)(4). *See id.* However, in this case, the Defendant filed no answer or objection. Accordingly, a motion to test the sufficiency was not an appropriate pleading to be filed and no fees will be awarded for its filing.

⁴ Upon the expiration of the time for responding to a request for admission, the matters contained in the request for admission are automatically deemed admitted, and "[n]o court ruling or intervention [is] required." *DeCola v. Kosciusko County Sheriff's Dep't*, 2007 WL 1650921, *1 (N.D. Ind. June 5, 2007). Although the Plaintiff's Motion was not necessary, granting the motion "does serve to clarify the record and avoid possible future confusion." *Id.*; *see also Shotwell v. Stevenson*, 2006 WL 3703365, *3 (E.D. Cal. Dec. 14, 2006) (granting motion to deem admitted notwithstanding the fact that the motion was "superfluous").